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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,717	01/30/2004	Erik J. van der Burg	MVMDINC.1CP1C4	5133

20995 7590 03/15/2006

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER	
DAWSON, GLENN K	

ART UNIT	PAPER NUMBER
3731	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/768,717	VAN DER BURG ET AL.	
	Examiner	Art Unit	
	Glenn K. Dawson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 December 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12-13-2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Ostrovsky, et al.-6447530.

Ostrovsky discloses an implantable device in fig. 29-35 having spokes 202 and barbs 206. The spokes expand from a linear configuration when constrained within a sheath 224, to an expanded diameter configuration as shown in fig. 29. The device is releasably attached to a deployment line 218 inside of a delivery catheter 226 inside the sheath 224- see fig. 32. As shown in fig. 32, the implantable device is capable of attaining a configuration having a small diameter at its two ends-204, 212 and rises to a central apex therebetween. A tube 216 extends from the distal end inside the filter towards the proximal end. As explained in col. 10 lines 49-56, even though the device is generally a means to remove a filter, the steps could be reversed in order to implant a filter.

Claims 1-8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Tsugita, et al.-6371971.

Tsugita discloses in fig. 9,9A and 9B an implantable device –filter 110 having struts extending from a proximal hub 111 to a distal hub 112. The struts proceed from a small diameter at the proximal hub to a large middle apex and then down again to a small distal hub. A filter membrane 110 is attached to the struts covering the distal portion to the apex. A deployment line 125 is removably coupled to the proximal hub 111 of the filter. The line is inside a catheter 133 which is inside an outer sheath 105.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrovsky, et al.-'530 in view of Brooks, et al.-6346116 and Tsugita, et al.-5911734.

Ostrovsky discloses the invention as claimed with the exception of the material of the filter having a membrane and the material of the membrane being ePTFE.

Tsugita discloses that it was known to provide a filter with a membrane. It would have been obvious to have placed a membrane on the filter of Ostrovsky, as this provides an effective means to filter out undesirable particles while allowing blood-flow therethrough. It also would have been obvious to have placed the membrane on the proximal face of the filter because as taught and shown by Tsugita in fig. 6b and col. 12 lines 11-28, if introduced in a retrograde orientation this allows the interior of the mesh to be directed upstream to collect debris. The filter is located distal of the delivery catheter.

Brooks discloses in col. 4 that it was known to use ePTFE as a filter material. It would have been obvious to have used ePTFE as the filter material as this effectively filters particles out of blood.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsugita, et al.-6371971 in view of Tsugita-'734.

Tsugita discloses the invention as claimed with the exception of the tissue attachment members. Tsugita-'734 discloses in fig. 8b tissue attachment members 90. It would have been obvious to have provided the filter of Tsugita with tissue attachment members in order to prevent its migration.

Response to Arguments

Applicant's arguments filed 12-13-2005 have been fully considered but they are not persuasive.

As pointed out above the embodiment of Ostrovsky shown in fig. 32 includes the shape claimed.

Applicant argues that Ostrovsky and Tsugita should not be combined because they deal with different medical conditions. Ostrovsky discloses in col. 3 lines 17-20 that the device can be used with stents. Both of these devices are used to filter blood of thrombotic material and therefore are analogous art. Placing the membrane of Tsugita on the filter of Ostrovsky would in no way destroy the device or its intended use. Gelbfish-5800457 discloses that it was known to place a membrane on the proximal side of a vena cava filter. There is no evidence that the placing of the membrane on the proximal end of Ostrovsky's filter would be unsuccessful at filtering out thrombus from the blood.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Glenn K Dawson
Primary Examiner
Art Unit 3731

Gkd
11 March 2006